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Reply under 37 CFR 1.116  
Expedited Procedure –  
Examining Group No. 3632

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICANT: Jeff Ciarlo

ART UNIT: 3632

APPLICATION NO: 10/693,716

EXAMINER: Le, Tan

FILED: 10/27/2003

FOR: POST PROTECTOR

DATE: November 23, 2004

**PROPOSED AMENDMENT AFTER FINAL**

**37 CFR 1.116(a)**

United States Patent & Trademark Office  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

In response to the FINAL Office Action dated 09/ 30/ 2004 and mailed 10/08/2004, kindly consider this Proposed Amendment After Final which is respectively presented herewith for the purpose of placing this application in: condition for allowance; in better form for appeal; removal of issues for appeal for reasons not

property addressed and presented earlier; and for compliance with objections, in accordance with 37 CFR 1.116(a); and in furtherance with issues discussed with Examiner Le on November 18, 2004.

**IN THE CLAIMS:**

Cancel claims 2-7.

Kindly amend claims 1 and 8 as follows:

Claim 1. (Twice Amended) A post protector to be positioned around the base of a vertical post, having a front and a rear portion, for preventing moving objects such as material handling equipment from striking the post secured to a support surface and for protecting the post protector itself, and any such moving object, from destruction of one by the other comprising: a barrier adapted to be positioned horizontally around the front and adjacent the rear of the post and spaced away from all sides of the base of the post providing a space between said barrier and the post to protect said post from being struck by a moving object adjacent the support surface; [and] said barrier having contiguous front and rear portions defining a certain size interior enclosure adapted to enclose the post in the interior formed thereby to provide said complete spacing of said barrier away from the post; [and] said barrier rear portion has an extended support portion extending horizontally rearwardly [significantly] beyond the post; said barrier having securing means interior thereto and adjacent said barrier extended rear portion and the post for

securing said barrier to the support surface rearwardly of the post for retention reaction against horizontal deflection of said barrier; and said barrier having resistively flexible oblique vertical bends between said front panel portions and said respective rear support portions adjacent extended side support portions whereby when said barrier is deflected rearwardly said rear support portions will resiliently deflect outwardly away from the post against the retention reaction of said rearward and forward securing means.

Claim 8. (Twice Amended) A vertical barrier as defined in claim [2] 1 having a securing means between said barrier rearwardly extending portions with a central beam portion at the bottom of said rearward barrier portions positioned totally between and adjacent the most rearward portions thereof and secured to respective rearwardly extended barrier portions, and said central beam portion being adapted to be secured to the floor forwardly of said rear most portion of said rearwardly extended portions to provide a resistive force around said rearward securing means when said barrier front portions are deflected rearwardly, whereby when said barrier is deflected rearwardly said rear support portions will resiliently deflect outwardly away from the post against the retention reaction of said rearward and forward securing means.

#### **SUMMARY OF THIS PROPOSED AMENDMENT AFTER FINAL**

This proposed Amendment after final rejection places the limitations of cancelled claims 2, 3, 4, 5, 6 & 7 in claim 1 and claim 8 is dependent on claim 1.

The substantive purpose of this proposed amendment after final is to emphasize, and distinctly define the extended rear support portions, of this invention, with securing means there between, and within the front prow portion, whereby when said barrier is deflected rearwardly said rear support portions will resiliently deflect outwardly away from the post against the retention reaction of said rearward securing means between the side portions rearwardly of the post, which does not appear in any prior art.

#### **REMARKS**

This Application has been carefully reviewed in response to the Examiner's comments in the DETAILED ACTION of the FINAL REJECTION herein dated 09/30/2004 and the November 18, 2004 interview conference with Examiner Le. Diligent and conscientious effort is made in the Proposed Amendment hereof to place this case in condition for allowance, in better form for appeal, and to comply with objections in accordance with 37 CFR 1.116(a). Accordingly, entry of this Amendment is, therefore, respectfully requested.

Original claims 1-8 were variously rejected as being anticipated by U.S. Patent No. 5,369,925 to Vargo and/or U.S. Patent 4,088,229 to Jacoby on the assertion that Vargo and Jacoby have extended support portion(s) extending rearwardly beyond the post from each side of the post and have rear securing means there between.

Jacoby and Vargo virtually have no extending rear portion that could provide horizontal resistance to deflection of the barrier as defined by amended

claims 1 and 8. Moreover, neither Jacoby nor Vargo has rearwardly extending portions securable to the support surface between side extended portions as defined by proposed amended claims 1 and 8 whereby when said barrier is deflected rearwardly said rear support portions will resiliently deflect the oblique angle sides outwardly away from the post against the retention of said rearward securing means, as is specifically defined by twice amended claims 1 and 8.

In rejecting the original claim 7 (now included in amended claim 1), the Examiner has asserted: “Regarding claim 7, Jacoby also further shows the securing means (48, 49) and between the barrier rearwardly extending portions (48, 49) ...” and “Regarding claim 8, Jacoby et al. also shows a central beam portion at the bottom (the base plate 35 generally) being secured to the floor.”

Jacoby drawings are misleading in this regard and do not disclose any securing means between rearwardly extending portions as is clearly defined by applicant’s amended claims 1 and 8.

In this regard, I call attention to Jacoby FIGS. 7 & 9 and 8 & 10. FIGS. 7 & 9 are mirror-like images as well as are FIGS. 8 & 10. In particular, the stub-like rear projections 55a and 56a (FIGS. 7 and 8) or 66a and 65a (FIGS. 9 and 10) of Jacoby that are asserted as rear projections with securing means are, in reality, front projections with a securing means. The one, and only, securing means in Jacoby is 35a (FIG. 5) in front and similarly variously shown (and un-numbered) in front in all FIGS. 7-10, etc.

Based on actual disclosure, Jacoby or Vargo, taken separately or in any possible remote combination, fail to disclose or even suggest rearward extending portions with means for securing a post protector between such extended portions, in combination with flexibly resistive oblique sides whereby when said barrier is deflected rearwardly said rear support portions will resiliently deflect outwardly away from the post against the retention reaction of said rearward and forward securing means, as is defined by amended claims 1 and 8.

Further, Jacoby and Vargo fail to disclose or suggest the above with a central beam portion being adapted to be secured to the floor forwardly of said rear most portion of said rearwardly extended portions to provide a resistive force around said rearward securing means when said barrier front portions are deflected rearwardly, as is defined by amended claim 8.

Proposed amended claims 1 and 8 appear to place this application in condition for allowance, better form for appeal, removal of issues for appeal for reasons not improperly addressed and presented earlier and for compliance with objections, and to overcome rejection of remaining amended claims 1 and 8 in accordance with 37 CFR 1.116(a).

Accordingly, applicant respectfully requests that this amendment be entered and the application allowed.

A clean copy of this Proposed Amendment After Final is provided herewith for the file.

Respectfully submitted,

JEFF CIARLO

By:   
EVAN D. ROBERTS  
Attorney for Applicant

Evan D. Roberts  
Reg. No. 18,891  
Attorney for Applicant  
119 N. Second Street  
P.O. Box 369  
Peotone, IL 60468-0369  
708-258-6318  
Fax: 708-258-6019